IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

CRP.No. 444 OF 2003()

AGAINST THE ORDER IA.1357/2000 IN LAR.49/97
OF SUB COURT, MANJERI

REVN. PETITIONER: PETITIONER:

MAKKATT NAFEESA, D/O. KUNHAMMAD,
NEDIYIRUPPU AMSOM, MELANGADI DESOM, MALAPPURAM.

BY ADV. SRI.P.VIJAYAKUMAR

RESPONDENTS: RESPONDENT:

THE DISTRICT COLLECTOR,
MALAPPURAM.

GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, ALONG WITH CRP NO. 510 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN, J.

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C.R.P. NOS. 444 & 510 OF 2003

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DATED THIS, THE 16TH DAY OF JULY, 2007.

O R D E R

Both these civil revision petitions arise out of a common order passed in I.A. Nos. 1357 and 1358/2000 in L.A.R. No. 49/1997 on the file of the Sub Court, Manjeri.

2. I.A. 1357/2000 was a petition for condonation of the delay in filing I.A. 1358/2000, which is a petition for reopening the case. The court below, by the impugned order, has dismissed those applications against which the present revision petitions are filed.

3. Petitioner is the claimant in L.A.R. 49/1997 on the file of the Sub Court, Manjeri. On the date fixed by the court below for trial, namely, on 9.8.2000, petitioner sought for an adjournment of the case. The counsel submitted that proper instructions are not given to him, as his client was ill. But the court closed the land acquisition reference case. Thereupon the petitioner filed an application for restoration as I.A.915/2000. The same was dismissed as not pressed since according to the learned counsel, the court orally observed that in a land acquisition matter, an application for

restoration would not be appropriate and an application for reopening the reference was to be preferred. Hence she was advised to file the present application and since there was some delay in filing the said application, an application for condonation of delay was also filed.

4. It is urged in the revisional memorandum that actually petitioner was prepared to adduce evidence; but no opportunity was given to her as the court itself opined that the matter should be decided on merits. But the court below found that the application filed is for the same purpose and no explanation is offered. Further, there is no evidence to show that the petitioner was suffering from any kind of disease. This is not controverted by filing any counter.

5. Even though this is a case where no evidence was let in to show that the petitioner was suffering from any ailment, according to the petitioner, she was not given sufficient opportunity to adduce evidence in this regard. The only ground on which the application was dismissed is that an application was filed earlier for the same purpose and the application for condoning the delay is not supported by any evidence.

6. The earlier petition was for restoration of the case to file. As held by this Court in **Krishna Pillai v. State of Kerala (** 1988 (2) KLT 898), in a land acquisition matter, even if no evidence is adduced, the court has to pass an order either maintaining the amount specified in the award passed

by the Land Acquisition Officer or enhancing it on account of some valid reasons and if the court dismisses the reference for default, it tantamounts to refusal to answer the reference which is not warranted by the provisions of the Act.

7. Therefore, there is miscarriage of justice since the matter was not decided on merits. In the above factual situation, I find that the matter requires to be considered. This Court, under Section 115 of the Code of Civil Procedure, is entitled to suo motu revise an order passed by the court below. Since the court below did not pass an award as required by law, as held by this Court in the decision cited supra, there is a jurisdictional error committed by the court below.

In the circumstances, these civil revision petitions are allowed. L.A.R. 49/1997 on the file of the Sub Court, Manjeri is restored to file. The parties shall appear before the Sub Court,, Manjeri on 13th August, 2007. Petitioner will be ready with her evidence on that day. The court below shall give sufficient opportunity to both sides to adduce evidence and dispose of the case in accordance with law, expeditiously.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. NOS:-
444 & 510/2003
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O R D E R

16TH JULY, 2007.